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# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1946.

No. 62.

CHARLES B. MORRIS,
Appellant,
vs.
PAUL F. JONES, Director of Insurance of the State of Illinois.

Appeal from the Supreme Court of the State of Illinois.

## APPELLANT'S REPLY BRIEF.

J. L. LONDON,
418 Olive Street,
St. Louis 2, Missouri,
FORD W. THOMPSON,
818 Olive Street,
St. Louis, Missouri,
JULIUS A. POLIKOFF,
111 West Washington,
Chicago 2, Illinois,
WILLIAM M. TANNENBAUM,
111 West Washington,
Chicago 2, Illinois,
Attorneys for Appellant.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

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## APPELLANT'S REPLY BRIEF.

### I.

### Observations and Comments on Appellee's Additional Statement of the Case.

As to "The additional statement of the case", on pages 2 to 6, of appellee's brief:—

Appellee in this additional statement, (pages 2 to 6 thereof) calls attention to what he says "are a few additional **material** facts, (emphasis is our own), which should be called to the attention of the Court".

Appellee then for that purpose, summarizes the petition filed by appellant in the St. Louis court on August 24, 1934 and states that there were three defendants named, Chicago Lloyds, Associated Underwriters, Inc., and Robert A. Roessel, an attorney, who had represented Chicago Lloyds in St. Louis; and on page 3 calls attention to the **fact** that while this damage suit was pending in St. Louis

> "and on February 9th, 1938, a Liquidator was appointed for Chicago Lloyds, who notified said Robert A. Roessel, who had appeared as counsel of record for Chicago Lloyds in said St. Louis damage suit, not to continue in the defense of said suit; and, that when said suit came on for trial in said St. Louis court on March 17, 1941, Robert A. Roessel was dismissed as a defendant, and although the remaining defendants were not present in court, either in person or by counsel, the record shows separate answers were filed on behalf of the remaining defendants (R. 34). Said **"purported"** answers denied the jurisdiction of the Court, denied that plaintiff was prevented from conducting his occupation as insurance agent as alleged in his petition for the reason, that prior to October 13, 1932, his license as an insurance agent and/or broker was revoked by the Insurance Department of Missouri for **cause**, and denied all of the allegations contained in plaintiff's petition. The plaintiff waived a jury, submitting the cause to the Court, and the case was then heard ex parte."

Were it not that appellee gives as a **reason** for adding these facts, "that they are additional **material** facts, which **should** be called to the attention of this Court", we might not make the following comments; but since we know of no reason for characterizing them as "material" facts, which require them to be "called to the attention of the Court," we strongly suspect that appellee has another motive, viz., an attempt "to prejudice" the **merits** of this case by subtle innuendo as he did before the Supreme

Court of Illinois. And since appellee has merely **sketched** said "material facts", and leaves to conjecture, what these pleas to the jurisdiction and "purported answers" really **were**, and by **whom**, and **when**, and **where** they were filed, we will supply the true light, and do so by staying within the record.

Those "answers and pleas to the jurisdiction," were the ones **filed by the defendants**, Chicago Lloyds and Associated Underwriters, Inc. in the Federal Court (Tr. 39-40), while the case was pending **there**, and **before** the case had been remanded to the State Court, and **upon which** the issues were there joined; and they were filed in the State Court on March 17, 1941, as the pleadings upon which the cause should be tried. The pleas to the jurisdiction, were also filed in the Federal Court and there had been overruled by the Federal Court (Tr. 14-39-40), before the cause was remanded, and long prior to February 9, 1938, when the Liquidator was appointed; and those pleas and answers distinctly disclosing the above, are **specifically** set out in the record at pages (Tr. 34-35, 39-40).

Just why they are characterized as "purported answers" we can only surmise.

Further we wish to state, that while it is true that **by those "answers"**, there was an **averment** that plaintiff's license as an insurance agent had been revoked **prior** to October 13, 1932 "for cause", this record, however discloses, that the defendants had maliciously caused appellant's first arrest **on** October 13, 1932, in a malicious effort in the criminal, rather than the civil courts, to **persuade** him to pay his indebtedness, (and though we know the facts, but do not wish to go outside of this record to state them) the **inference** is natural that the defendants themselves prior to having him arrested on Oct. 13, 1932 also caused the revocation of his license to any

longer act as **their** agent, since the laws of Missouri required appellant to file with the Insurance Department and keep on file his authority to write insurance for them (Secs. 5892, 5904, 5906, 5908 R. S. Mo. 1929), and therefore that they revoked and **used** the revocation of his license, as "a persuader", prior to maliciously resorting to the criminal court and having him maliciously arrested on October 13th, October 14th, November 28th, and December 2nd, 1932. We may also add, and we will not be going outside of the record, that perhaps it might be reasonably inferred that plaintiff dismissed against defendant Robert A. Roessel, individually, because he made no case against said individual defendant, since he was only a member of the firm of lawyers who (Tr. 16-32-40) participated with the defendants; and especially since this record **actually** shows, that appellant here did not dismiss as to defendant Robert A. Roessel, **until** he had **closed** his case against **all three** defendants (R. Tr. p. 34).

And again at pages 40 and 41 of appellee's brief appellee more clearly "elucidates" his true motive for calling attention to the above facts, and winds up by saying:

> "had appellant proved his claim in the liquidation proceedings, it may well be that his recovery if any, would have been much less than the amount of his judgment. This may account for his steadfast reliance upon the judgment."

And some ten lines above, on said same page 41 of his brief, appellee unqualifiedly asserts as follows:

> "According to his uncontradicted allegations he spent three days in jail because of his arrest, and 8 days in jail as the result of the indictment. That constituted his damage, except whatever damage may have resulted to his reputation because of the arrest. He alleges further damage in that he was prevented from continuing his business as an insurance agent

(R. 33), but the **record shows** (the emphasis is our own), that his license to do an insurance business in Missouri, had been revoked, **for cause**, by the Insurance Department of that State on October 13, 1932 (R. 34). Inasmuch as the first arrest of appellant on the embezzlement charge, took place on October 13, 1932, he had been deprived by the State of his right to carry on an insurance business in Missouri prior to his first arrest, and that alleged claim for damages is not tenable."

From the above, it is obvious that the appellee has given to the "**averments**" of the answer (which of course they never proved, though offered an opportunity to do so), the **effect** of the inuendo, contained in his said additional statement of the "**material** facts" which he states **should** be called to the attention of the Court.

Again at the bottom of page 5 of said additional statement appellee unqualifiedly states as follows:

"In the proceedings before the Master it was stipulated that appellant (claimant) on and prior to the 20th day of December, 1938, had notice of the Liquidation proceedings in the Superior Court of Cook County, Illinois, and of the Order of Injunction issued by that Court (R. 24)."

Said statement is not sustained by the record, and we therefore desire to also point out the above misstatement, and to page 83 of our original brief filed in this court, where we, anticipating that adversary counsel might again misstate the facts, **specifically** called attention to the very pages of the record here before this court, that conclusively disclose, that no such "stipulation" was ever entered into, and that this record discloses **conclusively** to the contrary.

II.

**Chicago Lloyds Was Not "Created" Under the Laws of Illinois.**

Again directing attention to appellee's said additional statement of the case, and to the last 2 lines of page 5 and top of page 6 thereof, where appellee states as follows:

> "Chicago Lloyds was not a corporation, but an unincorporated association **created** under and by virtue of the section of the Insurance Code applicable to individuals transacting insurance business in the State of Illinois under the name of Lloyds (Art. V. Insurance Code of 1937, Chapter 73, Section 698 and subsequent, Illinois Revised Statutes of 1945). Its only authority to conduct business in the State of Illinois was contained in a certificate of authority issued under the provisions of Section 699 of Chapter 73 of Illinois Revised Statutes of 1945. This certificate authorized Chicago Lloyds to transact business from the 1st day of July of the year of issuance to the 30th day of June of the following year, and unless renewed its right to conduct an insurance business terminated at the expiration date of the existing certificate."

That word "created", which we have above underscored, is the subtle statement of a legal conclusion, upon which appellee bases his **entire** argument and defense; and is one not deducible from **any** of the provisions of the Illinois insurance code therein referred to, or from any of the facts in this record.

The Statutes of Illinois referred to do **not** "create" either the individuals or the associations of individuals that may become authorized to transact an insurance business in the State of Illinois, but on the contrary only

provide (Section 614, Illinois Insurance Code, Chapter 73) that either a single individual, or an association of individuals, or a domestic or foreign corporation, or individuals conducting an insurance business **"on a Lloyd's plan" may** obtain **a license** to transact an insurance business in the State of Illinois; and as provided among those who may obtain a license are individuals or association of individuals who carry on their insurance business "under a Lloyd's plan"; and a special article, Article V, of said Insurance Code, provides the conditions under which **such** individuals, operating on a Lloyd's plan, may obtain the **approval** of "their Lloyd's plan."

**Such** insurance business "on a Lloyd's plan," by Section 86 (par. 698) provides that such individuals who wish to conduct an insurance business, on a Lloyd's plan, and who want to be **licensed** in Illinois to conduct that business, shall be and are arbitrarily divided and referred to in three classes: (1) "Domestic Lloyd's, meaning those individuals who have their home office in Illinois"; (2) "Foreign Lloyd's, meaning those who have their home office in other States of the United States"; (3) "Alien Lloyd's, meaning those who have their home office in foreign countries."

**Each** class is required to submit to the Insurance Director their "Declaration" of their proposed "Lloyd's plan of writing insurance" (Section 91, Par. 703), stating among other things the kind of insurance they desire and intend to write in Illinois, or are writing elsewhere in other States or in a foreign country. (We will not here repeat **all** of the provisions of the laws of Illinois which this "Declaration" is required to contain in order to obtain approval, because they are all set out in the law which is copied into the Appendix of our original brief at pages 104 to 106.)

However, the law clearly and distinctly provides that this "Declaration" must be "approved" by the Insurance Director; whereupon he issues to them "a certificate of approval" and also "a license to conduct their Lloyd's plan insurance business" in the State of Illinois **for one year**, and requires them to yearly thereafter obtain his approval and a **renewed** license.

The said statement on pages 5 and 6 of the brief of appellee that:

> "Chicago Lloyds was not a corporation, but an unincorporated association **created** under and by virtue of the Insurance Code applicable to individuals transacting insurance business in the State of Illinois under the name of Lloyd's" • • •,

is but the **start** made by appellee in the construction and later destruction of "a straw man," in an effort to build and supply a foundation, and to apply to **such** an association of individuals, the **effect** of the doctrine approved by this Court in the case of Pendleton against Russell, 144 U. S. 640, wherein in substance this Court, following the decisions of the State of New York on the **legal effect** of a dissolution decree by the courts of New York on a New York created insurance corporation, which decree terminated its artificial existence and forfeited its charter to be a corporation, and ended its existence as an artificial body, would have in **abating** suits against it; and wherein this Court held that judgments rendered against it subsequent to its dissolution were null and void in the same manner and for ONLY the very same reasons that judgments rendered against "a dead man" are void.

The above are our observations upon the additional statement of the case made by appellant on pages 2 to 6 of his brief.

## III.

### There Was No Waiver or Election.

Appellee also contends, in effect, pages 8 and 33 and 34 of his Argument, that appellant **lost** and **waived** his right to continue to prosecute his claim in Missouri to judgment and "elected" to prosecute it in Illinois. He there claims, that because upon receiving the notice from the Liquidator that he had taken possession of the assets of Chicago-Lloyds and that the Illinois court had fixed a dead-line for the filing of claims with said Liquidator, and the appellant responded to that notice, and filed his claim against Chicago Lloyds, with the Liquidator, that he therefore became "a party to the proceedings and was bound by the orders and decrees thereof" (treating the filing of his claim with such statutory Liquidator as the equivalent of and the same as appearing in court, and filing a claim with a Receiver, and as an **intervention** in a receivership proceeding). And that the appellant thereby submitted himself to the jurisdiction and to the procedure provided by the Illinois laws for the allowance and payment of claims.

This record, however, distinctly discloses on the contrary, that appellant made no such waiver and made no such surrender of his right to continue to prosecute his claim in his own jurisdiction, rather than submit it to another tribunal.

He, on the contrary, when filing his original claim with the Liquidator, filed **merely** a verified proof of claim on a form furnished by the Liquidator (T. 42, 10, 16) and attached thereto a copy of the petition for damages which he had filed in the St. Louis court, and which was there pending and awaiting trial, wherein the **basis** of his claim was averred; and **expressly** stated that said suit in St. Louis was awaiting trial upon its merits and that he intended to

prosecute it to final judgment; and when so reduced to judgment, would file an amended and supplemental claim. All as set out in this record (Tr. 10 and 16).

Therefore not only do the **facts** disclosed by this record conclusively disclose that no application of the said rules of law and principles of law, so contended for by Appellee, are actually involved in this case, but an examination of the very cases that appellee cites in support of such "election and waiver," disclose that the facts in each such case so cited by him, were far different from those here presented.

The first case cited by Appellee (p. 33 of his brief), **St. Louis-San Francisco Rd. et al. v. McElvane et al.**, 253 F. 123, is a case wherein bondholders had instituted a receivership proceeding against the railroad company for the foreclosure of its mortgage and for the benefit of all of its creditors, and there had been a foreclosure sale under that decree and the property of the debtor had been bought in by the bondholders. An unsecured creditor (McElvane) claiming that he was not a party to said Receivership suit (although he had intervened in said receivership suit, and had his claim allowed therein), attempted to question the legality and effect of said foreclosure decree, and brought a separate suit against said railroad company and the purchaser at said foreclosure sale in another court, alleging that the final decree of foreclosure and the sale under said decree, were violative of his rights as an unsecured creditor. The claim upon which he filed this separate suit was the same claim he had filed in the foreclosure case, to-wit: based upon a suit which he had theretofore brought against the railroad for the loss of a carload of mules. The receiver of the railroad and also the purchaser at said foreclosure sale, brought a suit to enjoin McElvane from proceeding

further with his said individual suit against them. The decree of the United States Circuit Court of Appeals for the Eighth Circuit, in said case, reported in 253 Federal 123, was to the effect that all unsecured creditors of a mortgagor are properly represented in a suit for foreclosure of the mortgage by their debtor, the mortgagor; and a decree and sale which bars the mortgagor in the absence of fraud, bars the unsecured creditor, who though not made a party thereto, or served with process, is there, by representation of his debtor; and the court enjoined the prosecution of said separate suit on that ground.

The second case cited on page 33 of Appellee's brief (Bethke et al. v. Grayburg Oil Co., 89 F. 2d 536) is one where the facts were very similar to those of the McElvane case, above mentioned. A plaintiff who had filed a claim in a federal receivership suit brought against the Grayburg Oil Company, and who obtained an allowance thereof, under an order authorizing the receiver to settle his claim, for one-third of the face amount thereof in full settlement of said claim, which said settlement the plaintiff had accepted, and was paid by said receiver, nevertheless attempted to prosecute said debtor, Grayburg Oil Company, thereafter in a separate suit for the balance of his claim in another court.

The corporation after discharge of the receiver filed a bill in the original receivership suit in said Federal Court to enjoin the said claimant from such attempt to collect said balance and obtained an injunction therein prayed for, based upon the fact that he was not again entitled to relitigate the matter, it being res adjudicata by reason of the accepted settlement and payment.

The third case cited by Appellee (Schwartz v. Randolph, 72 F. 2d 892) was a case where a stockholder of the defendant company had brought a suit in the Federal Dis-

trict Court of Maryland to have a receiver appointed to conserve the assets of said corporation on the ground that there was dissension between the directors. Schwartz resisted the application for a receiver unsuccessfully but took no appeal. After the receivership had been instituted Schwartz filed a suit against the company itself in the State of New York, for the sum of $79,328.92 alleged to be due him on an alleged breach of contract, and thereafter he intervened in said receivership suit in Maryland, and filed the **same** claim against the company; and in that receivership suit in Maryland, his claim was reduced to $2500 and allowed for $2500 against the company, from which he took an appeal. On the appeal the Court decided that having intervened in the receivership suit and having submitted his claim to the Receivership Court, that he was bound by the judgment, and that he was not thereafter entitled to proceed with his New York suit, his claim being res adjudicata.

## IV.

### The Entry of the Decree of Liquidation Did Not Adjudicate Appellant's Rights.

Further on pages 22 and 23 of Appellee's Brief, it is contended that appellant's **rights** were adjudicated at the time of the entry of the Liquidation Decree, February 9, 1938, and his **claim** against the insolvent "was fixed" as an unliquidated claim, subject to allowance or disallowance in accordance with the Liquidation Statutes of Illinois.

He also contends that **that** decree is res adjudicata of his rights, and that his Missouri judgment yields to that decree adjudicating his "status" and "fixed his status" as that of a mere creditor and holder of an **unliquidated** claim; and that he could not change that "status" as the

holder of an **unliquidated** claim, by reducing it to "a liquidated claim", by the judgment of any **other court**, than that of Illinois, which had so fixed his "status."

In support of this peculiar contention, he cites **Converse v. Hamilton**, 224 U. S. 243, 56 L. Ed. 749. We have ourselves cited that case at page 47 of our brief, in support of our contention "that full faith and credit must be given to a judgment of a sister state **even though** it is in conflict with the **policy** of the State of the forum,"—where **this** Court held that the courts of Wisconsin—the forum, could have **no policy** on the subject of the litigation, notwithstanding that to permit the action to be maintained in the Wisconsin courts, would be contrary to the settled **policy** of that State, in respect of the enforcement of the like liability of stockholders in its own Wisconsin corporations; since the matter was one, controlled by the Constitution of the United States requiring each state to give full faith and credit, etc., to the Minnesota proceeding **assessing** stockholders' liability.

We do not comprehend the appellee's contention—unless he thinks that because appellant's claim was **unliquidated** as of February 9, 1938, that it must remain unliquidated, and that only the Illinois Court could liquidate it—and we fail to see where in the Converse case, he obtains any support for such a thought. In the Converse case, supra, Minnesota had found that a resident of Wisconsin was a stockholder of the defendant corporation, and had fixed the amount of his unpaid liability as such stockholder. While it is true that in this instant case, the Missouri Court had NOT YET, on February 9, 1938, changed the appellant from "his status as the holder of an **unliquidated** cause of action" to that of a holder of a final judgment against Chicago Lloyds, we fail to comprehend **how** the State of Illinois, even in a proper case, could validly stunt the growth of appellant, and prevent him from becoming a judgment creditor.

## Doctrine Announced in Pendleton v. Russell, 144 U. S. 640, Is Not Applicable.

I.

There is no contention whatever made here on the part of appellant that if "Chicago Lloyd's" had been an Illinois insurance corporation and that the courts of Illinois, in a proper legal proceeding, had dissolved that corporation and forfeited its charter prior to the date of a litigant obtaining a judgment against it, that such judgment would have been void and a mere nullity under the doctrine stated in Pendleton against Russell, 144 U. S. 640, expressed by this Court.

However, no such FACTS and no such doctrine are here presented or involved.

We also in our original brief (pages 61, 63, 68) called attention to certain **facts** disclosed by **this** record which would make the doctrine of Pendleton v. Russell not applicable in this instant case, **even if** "Chicago Lloyd's" were a corporation and had been legally dissolved, and based upon the reasons given by this Court in the case of Clark v. Williard, 294 U. S. 112, wherein such doctrine of "legal death" and termination of the existence of an insurance corporation and the "abatement of pending suits" against it, were held **not** to operate, even in the case of a legally dissolved corporation because of the provisions of the **laws** of the Sister State (Montana), where the judgment was obtained.

That Pendleton v. Russell doctrine of "abatement" would not apply, even to a dissolved corporation, where the judgment was entered under the laws of the State of Missouri, providing as one of the conditions for licensing a foreign insurance corporation or a voluntary association of indi-

viduals to transact an insurance business in the State of Missouri (which provision said Chicago Lloyd's accepted) (Tr. 37, 40), that service of process upon it or upon them might be obtained against them in Missouri by serving process upon the Superintendent of Insurance

> "which shall be as valid as if served upon the company, and shall be binding and deemed personal service upon such company, **so long as** it shall have any liabilities outstanding in Missouri, even though such company may have withdrawn, been excluded from, or ceased to do business in the state";

and therefore that a judgment obtained against even a dissolved corporation upon such service in Missouri is valid and binding, notwithstanding it was entered subsequent to the dissolution of such foreign insurance corporation, as even a "Chicago Lloyds," by a proper decree of the courts of the State of its creation, and is therefore entitled to full faith and credit under the Constitution of the United States.

We excerpt from the decision of this Court in the above case of Clark v. Williard, 294 U. S. 1123 (l. c. 119), the following:

> "We assume in accordance with the decision of the Montana court that the respondents' action against the surety company did not abate on dissolution, but was lawfully pursued to judgment" (citing cases);

and also the following from Clark v. Williard, 294 U. S. 211, l. c. 213, 79 L. Ed. 865:

> "If the corporation were still in being, and still the owner of the assets, its ownership would be subordinate to the process of the local courts. So much would be conceded everywhere. If title had been conveyed to an assignee for the benefit of creditors by a common law assignment or by insolvency proceedings,

claimants in Montana might pursue their suits and remedies in derogation of the assignment when the law or policy of the locality ordained that this result should follow" (citing cases).

"The principle of these decisions applies with undiminished force to a statutory successor. In respect of his subjection to the power of the local law, his position is no better than that of the dissolved corporation to whose title he has succeeded **or of its voluntary assignee upon a trust for all the creditors.** He must submit, as must they, to the mandate of the sovereignty that has the physical control of what he would reduce to his possession." (Emphasis our own.)

**Under Laws and Decisions of State of Missouri the Illinois Liquidator Was Bound by Appellant's Missouri Judgment.**

In our original brief we at pages 61-63 and 68 unequivocally conceded **that** to be the law, and ourselves cited the decisions including Pendleton against Russell, and Clark v. Williard, 294 U. S. 211, in support of that doctrine; **but** we also called attention to the fact that such a judgment is **only** null and void because the individual against whom it was taken, or the corporation against which it was taken, is no longer in existence: The one because he, an individual, was dead, and the other because **it** had been legally dissolved. And we also called attention to the fact that the **sole** and **only** reason that such judgments are void, and a mere nullity, is as above stated, that they were taken either against a dead man, or a dissolved corporation whose legal existence had been legally terminated, by the State that created it, by dissolving it and forfeiting its charter.

In our original brief, at pages 65 to 75, we also directed attention to the well settled law, that suits that have been instituted and are pending against such artificial bodies, such State created corporations, are **not** legally

**abated** by the mere appointment of a Receiver to wind them up, **unless** and **until** an order has been legally entered in said receivership action, properly declaring said corporate body dissolved and its charter forfeited to the State, and its artificial existence thereby legally terminated; and that such is the law of this very State of Illinois (whether such corporation be an insurance corporation or a manufacturing corporation, etc.).

II.

While we do not wish to again in this Reply Brief review and urge any of the points and arguments already made in our original brief, we think it would be well to direct this Court's attention to another Missouri case: Central Trust Company of Mobile v. Edward D'Arcy, Trustee, of J. H. Smith Lumber Company, 238 Missouri 676 (October Term of the Supreme Court of Missouri, December 23, 1911), 142 S. W. 294, and to suggest the following:

"Chicago Lloyds", when they obtained their license to transact an insurance business under a Lloyds Plan in the State of Illinois, and obtained the approval of the Insurance Director of the State of Illinois of "their Lloyds Plan," as stated in their "Declaration" for writing insurance in Illinois, **may have** impliedly agreed with the State of Illinois, that if at any time they disobeyed any of the laws of Illinois, which provided for the termination of their license and their conduct of their business in Illinois, and for the appointment of a trustee or liquidator to distribute their Illinois assets among their creditors, viz: (if they fail to maintain and possess a surplus of $500,000 over and above their liabilities), that they would submit to an **involuntary assignment** of all their assets located in Illinois to a statutory liquidator, "for distribution among all of their creditors."

This we believe is the legal effect upon an unincorporated association, of the laws of Illinois involved in this case.

The Supreme Court of Missouri, in the Central Trust Co. v. D'Arcy case, supra, held that a judgment obtained in Missouri against an insolvent corporation after it had conveyed all of its property to a Missouri trustee for the benefit of all of its creditors, was a valid and binding judgment upon said corporation; that it is also binding upon said trustee; and that the fact that it had conveyed its assets to a trustee for the benefit of all of its creditors, did not exempt it from suit by its creditors; and that if in that suit, it permits judgment to go against it even by default, its trustee, when the judgment is presented to him for allowance and payment,—and when upon his refusal, suit is brought against him to compel payment, can not be heard to defend on the ground that the former suit was not brought against **him** and that **he** was not heard.

The Court held: that such suit established **the fact** that the corporation was the debtor, and that the plaintiff was its creditor, and that the trustee is not the owner of the property but accepted the conveyance for the purpose of paying the debts; and that it was his plain duty to recognize **that fact**, and to pay said creditor its appropriate part of the funds in his hands, said judgment being final and unappealed from and binding upon the parties thereto.

Such is the law of Missouri and the binding effect in Missouri of Appellant's said Missouri judgment against Chicago-Lloyds; and we may add is the law of every State of the Union where such an assignment has been made by any debtor for the payment of his debts; and that upon presentation of that judgment to the custodian of the debtor's property no defense is open to him that was not made when the judgment was entered.

The liquidator provided by the laws of Illinois did not become the owner nor the successor in ownership to even the property of the debtor that was located in Illinois and certainly obtained neither the ownership nor the possession nor right to take possession of any assets belonging to Chicago-Lloyds outside of the State of Illinois.

He is in law a mere trustee and custodian of the debtor's assets in Illinois; and has but one duty to perform: To collect and distribute them pro rata among those who are the legal creditors of the debtor. And a judgment creditor of a sister-state is such creditor upon presentation of a properly authenticated judgment rendered by a court of that sister-state, which had jurisdiction of the subject-matter and of the debtor when said judgment was rendered. The same doctrine is laid down by Glenn on Liquidation, pages 654 and 655.

When, however, the debtor is an Illinois corporation instead of a mere individual or a mere voluntary association of individuals, and the Courts of Illinois have by proper proceeding dissolved that "corporation-debtor," and it no longer exists, and the Statutes of Illinois provide that whatever assets that dead corporation possessed shall vest in that statutory liquidator, nevertheless although he obtains title to its assets he has but the same duty to perform: namely, to collect and distribute those assets to the defunct corporation's creditors. He becomes merely a trustee to liquidate and pay the proceeds of liquidation to the corporation's creditors; and if a suit was pending in a sister-state against that individual debtor or against a voluntary association of individual debtors, he must enter his appearance in that suit, and there contest its merits and having failed to do so can not require the claimant to again try the merits in his state.

III.

Appellee in his summary of the argument and also in his argument makes use of "a straw man." He treats "Chicago Lloyd's" as either an association of dead individuals or as a dissolved corporation; and since it is elementary law that all actions are abated by the death of the one, and the dissolution and the termination of the "State-given-life" of the other, he dwells upon irrelevancies, and attempts to apply the doctrine of Pendeleton against Russell to this "Chicago Lloyds."

He calls Chicago Lloyd's "a company" in this brief, while in the one he filed in support of his motion to dismiss this appeal, he referred to Chicago Lloyd's as "an estate" (page 1 of appellee's brief on dismissal), and having so described these associated individuals as "a State created body which the State of Illinois created and therefore had the power to destroy, he is attempting to evade the obvious fact that unless this association of individuals doing business under the name "Chicago Lloyd's," is an Illinois created corporation, they remained an association of living individuals not incorporated, after, and even though the courts of Illinois properly enforced the statutes of Illinois and took over their Illinois assets for legal distribution among all of their creditors, and revoked their license to any longer transact their insurance business under a Lloyd's plan, in the State of Illinois.

Had Chicago Lloyd's been an Illinois created corporation and by a proper proceeding its charter to exist had been revoked and its artificial existence had been terminated, and such a Court had taken possession of its assets, its legal death would have been accomplished (absent the doctrine established in Clark v. Williams, 294 U. S. 112), and the legal effect of such a dissolution would follow, regardless of the other provisions of the Illinois

Insurance Code (relative to issuing extraterritorial injunctions binding in sister state tribunals, and to "title" passing to the Liquidator and thereby abating all pending actions against "the dead man" in sister States) but due **entirely** to the elementary law and doctrine announced in Pendleton against Russell, 144 U. S. 640.

However, even if Chicago Lloyd's had been such "a State created artificial body," whose life and existence could be taken away, the doctrine of Pendleton against Russell would not apply **unless** and **until** the State of Illinois by a proper decree had dissolved it, and terminated its existence. And even the appointment of a receiver to take charge of a partnership or of such a corporation's assets, and to "wind it up," and distribute its assets among its creditors, would not suffice to put that doctrine into effect; and until it is "killed," and actually dissolved, any pending action against it can proceed to final judgment, whether it is pending in the State of Illinois or in a sister State; and a judgment of a sister State against even an undissolved corporation rendered in a case where only a Receiver has been appointed by the Courts of the State of its creation, is a valid judgment, and entitled to full faith and credit, "any provision of the Constitution or laws of the State of Illinois, to the contrary notwithstanding" (Aricle VI of the Constitution of the United States and the Fourteenth Amendment thereto)

Appellee in the Summary of Argument, page 7 of his brief, also argues that since the State of Illinois licensed these individuals by yearly license to carry on their business in the State of Illinois, and revoked that license, and refused to permit them to longer do an insurance business in Illinois (because they were found to have disobeyed one of the provisions of its laws, viz., failed to possess a surplus of $500,000.00 over and above their lia-

bilities, whereas they had but $300,000 of surplus, and for that reason had appointed a Liquidator to take charge of their assets, and had restrained their officers and agents from continuing to write insurance in the State of Illinois), and had ordered their assets distributed among their creditors, that such action against them is equivalent to "killing" those individuals who were transacting their insurance business under the name Chicago Lloyd and "terminated their existence," not only in Illinois, but in every sister State where they were doing business; and brought into play the doctrine of Pendleton against Russell, and ipso facto abated all suits pending in sister States, and rendered all judgments entered therein, subsequent to that "death" of Chicago Lloyds mere nullities and void; and justified the State of Illinois and its Supreme Court, in refusing to honor them in the distribution of the assets of Chicago Lloyds which Illinois had merely seized; and because Chicago Lloyds was therefore "dead," only the courts of Illinois had jurisdiction to adjudicate claims against the assets owned by those associated individuals.

The whole argument of appellee is based upon that fallacy, as pointed out specifically in our original brief. And since such was also the basis and ground of the decision of the Supreme Court of Illinois from which this appeal is prosecuted, we again submit, and pray this Honorable Court to reverse said erroneous decision, and to direct and order the Superior Court of Cook County, Illinois to set aside its order and judgment disallowing appellant's claim and to direct the Liquidator of Chicago Lloyds to allow said Missouri judgment for the sum of $50,000.00 with 6% interest thereon from April 7, 1941, until paid (which is the provision of said judgment [T. 35]) and to pay the same pro rata with all other unsecured creditors of Chicago Lloyds.

And we further pray for a directive and mandatory order so as to avoid future quibbling and to insure compliance with this court's decision, as to the right of appellant to participate pro rata with all other unsecured creditors, because his claim is based upon a tort committed by said individuals, under their name "Chicago Lloyds," and is therefore one that is entitled to rank equal to, and on an equal pro rata basis, with that of all general unsecured creditors, in the distribution of their assets, seized by the State of Illinois and in the possession of said Liquidator for the benefit of all creditors; and to retain jurisdiction until the mandate of this Court is obeyed.

Respectfully submitted,

J. L. LONDON,
FORD W. THOMPSON,
JULIUS A. POLIKOFF,
WILLIAM M. TANNENBAUM,
Attorneys for Appellant.